

Criminal Law Policy on Euthanasia Practices by Doctors in Indonesia from the Perspective of Justice and Protection of Patient Rights

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Abstract. *Indonesia, as a state based on law, places the supremacy of law as a foundation, including the protection of the right to life as stipulated in Article 28A of the 1945 Constitution. Euthanasia becomes a complex issue because it involves a dilemma between the right to life, human dignity, and the suffering of terminal patients. Article 344 of the Criminal Code prohibits ending life upon request; however, developments in medical technology create challenges in legal interpretation. Several countries have legalized euthanasia under strict conditions, unlike Indonesia, which has no specific regulation. This legal vacuum causes uncertainty for doctors and patients, thus requiring reconstruction of criminal policy that is relevant, just, and proportionally protects human rights. The research aims to describe and analyze the criminal law provisions currently in force in Indonesia regulating euthanasia by doctors and to describe and analyze the ideal criminal law policy in regulating euthanasia by doctors so that it is in line with justice and the protection of patient rights in Indonesia. This normative juridical research is descriptive, using secondary data from primary, secondary, and tertiary legal materials, analyzed qualitatively through a literature study to examine criminal policy on euthanasia in Indonesia. The results of this research show that the criminal law provisions currently in force in Indonesia regulate euthanasia by doctors, yet euthanasia regulation in Indonesia still triggers debate. Some support it as a human right to decide life or death, while others reject it because it contradicts religion and Pancasila. The Criminal Code regulates crimes against life in Articles 338–350, including murder, assisting suicide, and abortion. The new Criminal Code, Law Number 1 of 2023, does not directly regulate euthanasia, but Article 428 paragraph (1) regulates passive euthanasia with a penalty of 2.5 years imprisonment or a fine, and Article 461 regulates active euthanasia at the request of the victim with a penalty of nine years imprisonment. Both articles affirm the prohibition of euthanasia even at the request of the victim, and the ideal criminal policy in regulating euthanasia by doctors must be in line with the values of justice and protection of patient rights in Indonesia. The ideal criminal policy regarding euthanasia in Indonesia must balance the protection of patients' right to life, the professional responsibilities of doctors, and moral and religious values. Regulations must include sanctions, procedures, ethical guidelines, and monitoring mechanisms. Exceptions may be granted for terminal medical conditions with written consent, physician verification, and ethics team recommendation. Criminal sanctions should be the ultimatum*

remedium, preceded by ethical and administrative mechanisms. Synchronization with the Health Law, the Medical Practice Law, and the code of ethics is important to avoid conflicts of norms. Supervision by an independent ethics committee prevents misuse. Public participation, periodic evaluation, as well as training for medical personnel and law enforcement officers will strengthen patient protection and legal certainty for healthcare professionals.

Keywords: *Criminal Law; Doctor; Euthanasia; Patient Rights Protection.*

1. Introduction

The Unitary State of the Republic of Indonesia is based on the principle of a state based on law (*rechtsstaat*) which rejects the supremacy of power alone (*machtsstaat*), thus affirming that all actions of state administrators and citizens must comply with legal provisions. This fundamental principle is enshrined in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which affirms the purpose of the state to protect all Indonesian people, advance public welfare, improve the life of the nation, and participate in implementing world order based on independence, eternal peace, and social justice. Furthermore, Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that "the State of Indonesia is a state based on law," which is the constitutional basis for the supremacy of law in Indonesia.¹

This constitutional provision emphasizes that law is the primary guideline for governing national and state life. In this context, law serves as a means to achieve social justice and protect human rights. The recognition that law must regulate all aspects of life demonstrates the state's commitment to protecting citizens' rights and universal justice. Therefore, the implementation of law must always prioritize the collective interests of the people, in line with the spirit of the constitution, which prioritizes justice and shared prosperity.²

Legal development and reform must be implemented in a focused and integrated manner to address the evolving needs of society. The process of legal codification and unification is a crucial step in responding to the demands of dynamic development, in line with increasing public legal awareness. The establishment of relevant legal instruments through legislation is crucial to ensuring the creation of social order and justice in facing the challenges of the times.

Advances in technology and science have also changed people's mindsets, attitudes, and actions, directly impacting their legal awareness. These changes influence how society assesses an act, whether it is considered normal or actually threatens social order. Crimes that utilize technology often emerge as a new phenomenon that endangers public security and welfare, necessitating adaptive regulations to address them.³

2. Research Methods

This research applies a qualitative legal approach, utilizing secondary data as the primary source. The data used consists of primary, secondary, and tertiary legal materials. All legal materials were systematically collected and then analyzed to draw conclusions related to the main issues in this research.⁴

¹ Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta, 2006, P. 55

² Mahfud MD, *Politik Hukum Di Indonesia*, LP3ES, Jakarta, 2017, P. 89

³ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Liberty, Yogyakarta, 2007, P.134

⁴ Soerjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif*, Rajawali Press, Jakarta, 2010, P. 12.

3. Results and Discussion

3.1. Current Criminal Law Provisions in Indonesia Regulate the Practice of Euthanasia by Doctors.

The term euthanasia is rooted in the Greek word "ethanatos," a combination of the words "eu" and "thanatos." "eu" connotes beauty, goodness, and honor, or is translated as "gracefully and with dignity" in English. Meanwhile, "thanatos" means death. Etymologically, this term refers to the concept of a "good death," which implies the process of ending life in an honorable manner and without prolonged suffering.⁵

The use of the term euthanasia is also recorded in Roman history. Suetonius, a renowned writer of the time, defined euthanasia as "quick death without suffering." This meaning emphasized a death that was short, painless, and free from prolonged physical suffering. This concept later evolved into a medical and ethical term referring to the act of intentionally ending a person's life to spare them pain or an incurable condition.

The definition of euthanasia, put forward by the Euthanasia Study Group of the KNMG Holland, or the Dutch Medical Association, includes two main forms of action. First, a doctor intentionally withholds a specific medical procedure (nalaten) that could prolong a patient's life. This choice is made when prolonging life is deemed to provide no significant benefit to the patient but only prolongs suffering. The primary focus of this definition is protecting the patient's interests and quality of life, ensuring that every step taken takes into account the patient's physical and psychological well-being.⁶

The second aspect of this definition is the conscious act of shortening or ending a patient's life. This action is carried out with humanitarian considerations, namely to relieve suffering caused by an incurable disease. Within the framework of the KNMG Holland, euthanasia is not merely a medical procedure, but also an ethical decision concerning the patient's right to be free from prolonged pain. All decisions made must be based on the patient's own best interests, without interference from the personal motives of others.

The main principle of this definition is that euthanasia is carried out solely for the patient's well-being, not to fulfill the interests of the family, physician, or healthcare institution. This action is based on the understanding that a quality of life is prioritized over simply prolonging life without hope of recovery. KNMG Holland emphasizes the importance of obtaining the consent of the patient or their authorized representative before euthanasia is performed. Thus, this practice remains within the bounds of medical ethics, law, and humanity, despite being a hotly debated issue in various countries.

Since the 19th century, the term euthanasia has been used to describe efforts to avoid pain and alleviate suffering for individuals in the final stages of life. This procedure is performed

⁵ Petrus Yoyo Karyadi, *Euthanasia Dalam Perspektif Hak Azasi Manusia*, Media Pressindo, Yogyakarta, 2001, P. 25

⁶ Fred Ameln, *Kapita Selekta Hukum Kedokteran*, Grafikatama Jaya, Jakarta, 1991, P. 132

with the assistance of medical personnel, particularly physicians, who are competent in providing palliative care. The use of this term reflects the view that death should occur without excessive pain. In this context, euthanasia is understood not only as the act of ending life, but also as a medical approach to improving the quality of life of patients approaching death.⁷

The terminology used at that time encompassed three main categories that served as the basis for grouping its practices. These categories illustrate the different forms of action taken, ranging from the elimination of certain medical interventions to active measures to hasten the death process. Each category has distinct characteristics, ethical considerations, and procedures. This grouping helps understand the complexity of euthanasia from a medical, legal, and ethical perspective, allowing each form to be analyzed separately according to its goals and the patient's situation. The scope of euthanasia has three aspects:

a. Narrow Usage

Euthanasia, in its narrow sense, refers to medical procedures aimed at sparing the pain of a patient facing the end of life. This treatment focuses on providing care that minimizes physical suffering without shortening the patient's life. This approach is often associated with palliative care, which helps patients live their final days with a better quality of life. Essentially, euthanasia in the narrow sense is not oriented toward hastening death, but rather toward alleviating preventable pain through legally and ethically acceptable means. The implementation of euthanasia in this sense remains within the legal regulations in force in a country. Medical personnel performing it must adhere to medical procedures in accordance with the ethical standards of the medical profession. Every action taken must consider the social norms, cultural values, and customs prevailing in the patient's environment. Compliance with these standards is intended to prevent the misuse of medical procedures that could harm the patient. Therefore, the implementation of euthanasia in the narrow sense tends to be more widely accepted by society than other forms.

This narrow approach to euthanasia positions the physician as the active party in providing safe and appropriate care to the patient's needs. Interventions typically include administering painkillers, supportive therapy, and medical procedures to maintain the patient's physical and emotional comfort. The entire process is carried out with respect for life while striving to avoid unnecessary suffering. The application of this narrow definition is often seen as an acceptable compromise between medical and humanitarian obligations.

This narrow definition also takes into account the moral values held by the patient's family. Every step taken is usually discussed first with the family to ensure understanding. This understanding prevents moral conflict between medical personnel, patients, and families. The patient's or family's consent is a crucial factor in ensuring that the procedure is truly for

⁷ Ahmad Wardi Muslich, *Euthanasia Menurut Pandangan Hukum Positif dan Hukum Islam*, PT Raja Grafindo Persada, Jakarta, 2014, P. 87

the patient's well-being. Therefore, euthanasia, in the narrow sense, is considered a form of empathy demonstrated through caring medical care.⁸

3.2. Ideal Criminal Law Policy for Regulating Euthanasia Practices by Doctors to Align with the Values of Justice and Protection of Patient Rights in Indonesia

The practice of euthanasia raises legal, moral, and ethical dilemmas that require careful formulation of criminal policy. Indonesia, as a nation governed by the rule of law, must ensure that its regulations do not conflict with the principles of human rights protection guaranteed by the constitution. An ideal criminal law policy must balance the right to life, patient protection, and the professional responsibilities of doctors. Formulating this policy requires the involvement of various parties, including legislators, medical professional organizations, and community leaders. The goal is to establish regulations that not only regulate criminal sanctions, but also address the need for a more comprehensive and comprehensive criminal code.⁹, but also provide clear ethical and procedural guidelines for medical personnel. The concept of substantive justice must be the primary foundation in regulating euthanasia. Substantive justice not only examines the formal aspects of the law but also considers the patient's humanitarian values and concrete circumstances. An ideal criminal policy should consider the medical situation of patients who are scientifically deprived of life expectancy. This regulation should include a transparent consent mechanism involving the mentally competent patient, their immediate family, and the hospital ethics team. Thus, the decision to euthanasia is not made unilaterally by medical personnel, but through a collective process that is legally and morally responsible.

The patient's right to life and adequate healthcare is guaranteed in Articles 28A and 28H of the 1945 Constitution. Criminal law policies related to euthanasia must prioritize respect for these rights. However, in certain medical conditions, euthanasia may be viewed as a form of respect for the dignity of patients suffering without hope of recovery. Ideal regulations should distinguish between prohibited killing and euthanasia carried out within an ethical and legal framework. This distinction is important to avoid over-criminalization of doctors who act based on medical and humanitarian considerations.¹⁰

The newly enacted Criminal Code (KUHP), Law No. 1 of 2023, still prohibits the taking of life, without providing specific exceptions for euthanasia. An ideal criminal law policy could consider adding an exception clause with very strict conditions. These conditions could include a terminal medical condition verified by more than one specialist doctor, written consent from the patient or their family, and a recommendation from a medical ethics team.

⁸ Andhi Nirwanto, *Euthanasia Pidana Mati dan Hak Asasi Manusia*, Referensi (GP Press Group), Jakarta Selatan, 2015, P. 90

⁹ Sri Endah Wahyuningsih. Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai–Nilai Ketuhanan Yang Maha Esa. *Jurnal Pembaharuan Hukum*, Universitas Diponegoro, Semarang, Vol. I No. 1, Januari–April 2014, P. 17.

¹⁰ Panitia Redaksi Musyawarah Kerja Susila Kedokteran Nasional, *Kode Etik Kedokteran Indonesia*, Ikatan Dokter Indonesia, Jakarta, 1969, P. 88

Master of Law, UNISSULA

Such a regulation would provide legal certainty for doctors while protecting patients from potential abuse of euthanasia.

Criminal law instruments should be the ultimum remedium in handling euthanasia. The use of criminal sanctions should be a last resort in cases of serious violations of established procedures. Before resorting to criminal sanctions, ethical mechanisms, professional discipline, and administrative sanctions need to be optimized. This approach aligns with the principle of proportionality in criminal law, which demands a balance between violations and sanctions. By making criminal law a last resort, the burden of criminalization on medical personnel can be reduced, while optimal patient protection remains.

Regulating euthanasia requires synchronization between criminal law, health law, and medical codes of ethics. Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice contain principles that can be used as references. This integration will prevent conflicts between criminal provisions and professional ethics. Synchronization will also provide clear guidelines for doctors when dealing with terminally ill patients. Integrated criminal law with health regulations will create a legal system that is more responsive to evolving societal needs and advances in medical science.

Doctors hold a strategic position as the primary practitioners of euthanasia, so criminal law policy must define the limits of their authority. Establishing standard operating procedures (SOPs) for euthanasia is crucial to ensuring accountability in medical procedures. These SOPs must include medical assessment, ethical consultation, and complete documentation of each stage of the decision-making process. These documents serve as legal evidence if the doctor's actions are questioned at a later date. With clear operational guidelines, doctors have a basis for acting legally and avoiding the risk of disproportionate criminalization.

Legal protection for patients is a crucial pillar of an ideal criminal policy regarding euthanasia. Patients have the right to receive complete information regarding their condition, treatment options, and the consequences of any medical procedure, including euthanasia. This right to information is stipulated in Article 8 of Law Number 29 of 2004 concerning Medical Practice. Information must be provided in language easily understood by the patient and their family. Consent for medical procedures must be in writing, witnessed by an independent third party. This ensures that decisions are made consciously and without coercion.

Preventing the misuse of euthanasia should be a primary focus of ideal criminal policy. Strict oversight is needed by an independent institution authorized to examine and evaluate each euthanasia case. This institution could take the form of a national ethics committee under the coordination of the Ministry of Health, with members from the medical, legal, and community sectors. Case evaluations are conducted before and after the euthanasia procedure is

performed. A robust oversight system will minimize the risk of euthanasia without a legitimate medical basis or carried out for purposes contrary to the law.¹¹

4. Conclusion

The application of restorative justice (RJ) to traffic cases characterized by negligence is legitimate, relevant, and proportionate. Cases stemming from negligence, with concrete remedial measures in place, including immediate assistance, coverage of medical expenses, and written settlement agreements, meet the eligibility criteria for RJ. The panel of judges continues to uphold the rule of law through measured sentencing, while using settlement agreements as a basis for mitigating factors. This configuration demonstrates a balance between legal certainty (*rechtszekerheid*), justice (*al-'adālah*), and expediency (*doelmatigheid*).

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¹¹ Djoko Prakoso dan Djaman Andhi Nirwanto, *Euthanasia: Hak Asasi Manusia dan Hukum Pidana*, Ghalia Indonesia, Jakarta, 1984, P. 100